IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.Rev.No.816 of 2001
Date of Decision:- 05.09.2007

Kashmiri Lal ....Petitioner(s)

through
Mr.Arun Palli, Sr. Advocate with
Mr.Jai Bhagwan, Advocate.

vs.

Deputy Director General of Foreign Trades and others ....Respondent(s)

through
Mr.Rajan Gupta, Special P.P. for C.B.I.

Mr.Gautam Dutt, Advocate for respondent Nos.2 and 3.

***

CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

***

1) Whether Reporters of the local papers may be allowed to see the judgment?
2) To be referred to the Reporters or not?
3) Whether the judgment should be reported in the Digest?

***

SURYA KANT, J. (ORAL)

This criminal revision is directed against the order dated 13.3.2001 passed by the learned Additional Sessions Judge, Patiala whereby he set aside the orders dated 19.1.1999 and 28.9.1999 passed by the learned trial Magistrate and accepted the application under Section 245(2) Cr.P.C. thereby discharging respondents No.2 and 3.

A complaint under Section 5 of the Imports and Exports (Control) Act, 1947, Section 5 of the Impex Act, 1947 read with Section 120 B IPC was filed by the Deputy Director General of Foreign Trade,

Ludhiana against the petitioner in his capacity as partner of M/s.Anil International.

It appears that the petitioner after having been summoned in the aforesaid complaint, moved an application under Section 319 Cr.P.C. for summoning of respondents No.2 and 3 as additional accused persons. The petitioner's application was allowed vide order dated 19.1.1999 by the learned Special Judicial Magistrate, CBI and respondents No.2 and 3 were also summoned to face trial.

Respondents No.2 and 3 thereafter moved an application under Section 245(2) Cr.P.C. for their discharge, however, the said application was turned down by the learned Special Judicial Magistrate vide his another order dated 28.9.1999.

Aggrieved, respondents No.2 and 3 preferred a revision petition which has since been accepted by the learned Additional Sessions Judge, Patiala vide his impugned order dated 13.3.2001 thereby setting aside both the above-mentioned orders passed by the learned Special Judicial Magistrate. As a consequence thereto, respondents No.2 and 3 stand discharged.

The petitioner assails the above-stated order passed by the learned Additional Sessions Judge through this revision petition.

Notice of motion was issued and in response thereto, respondents No.2 and 3 have put in appearance.

It is vehemently contended on behalf of the petitioner that there is sufficient evidence/material on record on the basis of which there is every likelihood of conviction of respondents Nos.2 and 3. It is contended that the order of summoning respondents No.2 and 3 passed by the learned

Special Judicial Magistrate is a well reasoned order and falls within the parameters laid down by the Apex Court in the case of **Michael Machado & anr. vs. CBI & anr.**, (2000) 3 SCC 262.

In regard to the petitioner's *locus standi* who is one of the accused in the case, learned counsel for the petitioner relies upon the judgments of the Hon'ble Apex Court in **Y.Saraba Reddy vs. Puthur Rami Reddy & another.** 2007 (2) R.C.R. (Crl.)1015; **Lok Ram vs. Nihal Singh**, 2006 (2) RCR (Crl.) 707 and **Shashikant Singh vs. Tarkeshwar Singh & another.**, (2002) 5 SCC 738 and contends that an application under Section 319 Cr.P.C. is maintainable even on behalf of an accused also.

On the other hand, learned counsel for the respondents pointed out that during the pendency of this revision petition (which was filed in the year 2001) much water has flown inasmuch as the trial proceedings against the petitioner are at the verge of completion.

It is pointed out that though the prosecution-complainant had proposed to examine as many as 60 witnesses, out of which only 50 were shortlisted and most of them have already deposed. On this premise, it is argued that it would be too late to summon respondents Nos.2 and 3 to face *de novo* trial at this stage. It is, however, argued by learned counsel for the petitioner that even in a case where trial against the main accused has been concluded and/or the same is on the verge of completion, it does not preclude the Court from exercising its power under Section 319 Cr.P.C.

After hearing learned counsel for the parties and having regard to the stage of the ongoing trial against the petitioner, I am of the considered view that this may not be an appropriate stage to express any views on the merits of the contentions raised on behalf of the petitioner for summoning

of respondents No.2 and 3. After the passing of order dated 19.1.1999 by the learned Special Judicial Magistrate whereby respondent Nos.2 and 3 were summoned to face trial, most of the prosecution witnesses have been examined in the ongoing trial. In all probabilities, the nature of evidence on record on the basis of which the Court is required to form its opinion regarding 'likelihood of conviction', might have changed. In any case, the evidence which has been brought on record subsequently, is also required to be looked into before the Court forms any opinion regarding complicity of respondents No.2 and 3 in the matter.

Consequently, this revision petition is disposed of with a direction to the learned Special Judicial Magistrate to proceed and conclude the ongoing trial as early as possible and preferably within four months. However, liberty is granted to the petitioner to raise all his contentions including those pertaining to complicity of respondents No.2 and 3 before the learned Judicial Magistrate who shall take into consideration the same notwithstanding the observations made by the learned Additional Sessions Judge, Patiala in his impugned order dated 13.3.2001.

As a sequel thereto, the learned Special Judicial Magistrate shall draw final conclusions in accordance with law and/or upon consideration of the entire evidence led by the prosecution. Consequences, if any, of the findings arrived at by him, shall obviously follow.

September 05, 2007 **(SURYA KANT)**
poonam **JUDGE**